

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.789 of 2006

Sadanant Kundlik Thorat

Applicant

Vs.

Shri Vikas Murlidhar Wadghule & anr. Respondents

Mr.Surel Shah for applicant.

Mr.S.R.Shinde, APP for State.

CORAM: B.H.MARLAPALLE, J.

September 24, 2007.

P.C.

. Heard Mr.Shah, the learned counsel for the applicant who is seeking leave to appeal under Section 378(4) of Cr.P.C. against the order of acquittal passed by the learned Judicial Magistrate, First Class at Pune in Summary Criminal Case No.2372 of 2002 on 20/1/2006. It was a case filed under Section 138 of the Negotiable Instruments Act, 1881 and on appreciation of of the evidence adduced by the complainant, the trial Court came to the conclusion that the dishonoured cheque dated 15/5/2002 in the sum of Rs.1,53,000/- was not issued towards the repayment of any debt or any other legal liability. On the basis of the evidence the trial Court held that there was a settlement (Exhibit 68) between the

parties regarding the sale of the truck by the complainant to the accused and for an amount of Rs.6 lakhs.

. Mr.Surel Shah, the learned counsel for the applicant - complainant has relied upon the letter at Exhibit 51 and purportedly signed by the accused himself on 27/7/2005. As per the said letter the accused himself had undertaken to pay the dishonoured cheque amount and as per Mr.Shah this undertaking has not been considered by the trial Court.

. The complainant in his cross-examination admitted that pursuant to the agreement at Exhibit 68 signed on 21/12/2000 the truck with Registration No. MH-12-UA-4726 was put in possession of the accused and the accused had paid an amount of Rs.60,960/- in cash while taking over the possession of the truck. He further argued that the dishonoured cheque was given to him by way of balance amount of the sale transaction and that the truck was not transferred in the name of the accused. He also admitted that the loan amount was not transferred in the name of the accused and the RC book of the truck was with Rupee Co-operative Bank as he had borrowed the money from

the said Bank for purchase of the truck. He also admitted that within less than one year of handing over of the truck to the accused, it met with an accident. This implies that the truck met with an accident before 21/12/2001. In the evidence of PW 2 - Shri Dilip Khand it has come on record that after the accused paid an amount of Rs.60,940/- in cash, the accused had issued 20 postdated cheques to the complainant on the date of the transaction and it was agreed that the remaining amount of the sale transaction would be paid by the accused in cash and with monthly instalments of Rs.15,240/-. The witness also admitted that when the truck was returned by the accused to the complainant these twenty cheques, which were postdated and were in the possession of the complainant, were not returned to the accused and one of the cheques was misused by the complainant. The complainant in his evidence admitted that after the truck met with an accident, there was a settlement between him and the accused with the intervention of the police and accused gave him additional amount of Rs.40,000/- in cash by way of settlement on 2/5/2002. He also admitted that as on 15/5/2002 when the dishonoured cheque was presented for encashment, the accused was not in possession of

the truck. Under these obtaining circumstances, the trial Court was right in holding that the dishonoured cheque was not issued in discharge of debt or any other legal liability. The complainant had also admitted that on receipt of an amount of Rs.40,000/- in cash from the accused, he had issued a receipt for the same. Therefore, Mr.Shah's reliance on the document at Exhibit 51 is misplaced and the claim of the complainant that a cheque for Rs.1,53,000/- was issued by the complainant in discharge of the total liability of Rs.2,84,920/- has been falsified.

. Hence there is no case made out to grant leave to appeal as the reasoning set out by the trial Court in support of the acquittal order does not call for reconsideration at the hands of this Court. The application is, therefore, rejected.

(B.H.MARL